

**ST. GEORGE CITY COUNCIL MINUTES
WORK MEETING
JUNE 13, 2013
ADMINISTRATIVE CONFERENCE ROOM**

PRESENT:

**Mayor Daniel McArthur
Councilmember Jon Pike
Councilmember Gail Bunker
Councilmember Gil Almquist
Councilmember Ben Nickle
City Manager Gary Esplin
City Attorney Shawn Guzman
City Recorder Christina Fernandez**

EXCUSED:

Councilmember Jimmie Hughes

OPENING:

Mayor McArthur called the meeting to order and welcomed all in attendance. The pledge allegiance to the flag was led by Councilmember Nickle and the invocation was offered by Reverend Alex Wilkie.

Mayor McArthur stated tomorrow is Flag Day and the Elks Lodge will be holding a ceremony to properly dispose of tethered flags and on Monday, The McQuarrie Museum will be having a ceremony to celebrate its 75th anniversary.

PRESENTATION FROM THE ST. GEORGE MUSICAL THEATER:

Bruce Bennett with the St. George Musical Theater presented a power point presentation covering the following topics: St. George Musical Theater, SGMT Provides; City Provides; Benefits; Recommended Modifications; Estimate of Revenues; Average Performance Attendance ; Riser Layout; SGMT 2013-214 Season Proposal.

Mayor McArthur inquired if the revenue would cover the cost of the utilities.

City Manager Gary replied yes.

Leisure Services Director Kent Perkins advised the Opera House currently generates an average of \$17,000.00 in revenue which would be lost since, based upon the proposed schedule, other events could not be accommodated.

City Manager Gary Esplin advised if the St. George Musical Theater were to use the Opera House, items cannot be stored outside as they were in the past.

Mayor McArthur expressed he is concerned because the City is no longer renting the third floor of the Arts Building that the Opera House will not be available for use. He stated he does not want the Opera House modified.

Mr. Bennett stated the schedule is a tentative schedule. There are no plans to modify the building; however, they plan to update the lighting and speaker system.

Councilmember Pike advised he is in favor of the City assisting the St. George Musical Theater with regard to getting it up and running but if they were to move, he does not feel the City will be able to help again.

Mr. Bennett stated they do not want to ask the community for money. The Eccles foundation has said they would match contributions up to \$250,000.00 for them to be able to get into a larger building.

Councilmember Bunker stated she feels the City should support the St. George Musical Theater if possible. She believes the only negative would be that the City would not be able to rent the Opera House any longer.

City Manager Gary Esplin advised allowing the St. George Musical Theater to use the Opera House would benefit the downtown area. Based on past history, he is concerned that the building may be damaged. Additionally, he questioned what will happen if there are no options for a larger venue in the future.

Mr. Bennett stated the St. George Musical Theater would stay longer if needed. He stated he would need a decision soon.

PUBLIC HEARING:

Public hearing to receive public input on the 2013-2014 fiscal year budget.

Mayor McArthur opened the public hearing. There being no public comment, he closed the public hearing.

FISCAL YEAR BUDGET/RESOLUTION:

Consider approval of a resolution adopting the 2013-2014 fiscal year budget.

City Manager Gary Esplin recommended transferring \$1,031,750.00 from the Capital Projects Fund to the General Fund to fund the following: \$219,6000.00 for the purchase of six vehicles for the Police Department, \$195,440.00 for an overhead tank for the fuel yard, \$44,000.00 to repaint City Hall, \$252,000.00 to replace the sweeper truck in the Streets Department, \$133,000.00 for Tawa Ponds improvements and \$132,610.00 to maintain and update the 700 South Pool and Sand Hollow Aquatic Center. In addition, he recommended the following: \$144,510.00 for improvements on City Creek to be paid out of the Drainage Utility Fund; transferring \$86,000.00 from the Capital Projects Fund to the General Fund to update the Recreation Center; \$179,650.00 for the Betterment Agreement with UDOT for mile post 8; \$150,000.00 to repair the Black Hill scar; \$500,000.00 for the Tabernacle round-a-bout; \$750,000.00 to build offices for the Leisure Services Department at the old courthouse; and \$100,000.00 to repair drainage issues at Entrada to be paid out of the Drainage Impact Fund. He explained how the City acquired the old courthouse.

MOTION: A motion was made by Councilmember Bunker to adopt the budget by resolution.

SECOND: The motion was seconded by Councilmember Almquist.

VOTE: Mayor McArthur called for a roll call vote as follows:

Councilmember Bunker - aye
Councilmember Almquist - aye
Councilmember Nickle - aye
Councilmember Pike - aye

The vote was unanimous and the motion carried.

DISCUSSION ON THE LAKES GENERAL PLAN:

City Manager Gary Esplin explained the General Plan was adopted for the area called The Lakes, south of Sunbrook Golf Course.

Matt Ence proved a hand out entitled The Lakes at St. George, Community Image Booklet and reviewed it. The hand out includes project narrative, Land use master plan, neighborhood plan (parcel 6), neighborhood plan (parcels 10 & 12), landscape master plan, community park and sports park, Plantations Drive (primary entry), Plantations Drive (secondary entry - alt. B), Plantations Drive (secondary entry - alt. B), neighborhood entry, Lago Vista Drive, Alienta Drive and bridge, pedestrian underpass, Lake Ramada, neighborhood walls, community signage and street sections. He advised they are not changing any of the agreement and that the Master Plan was adopted approximately six years ago.

Rick Rosenberg stated the roadways will follow the City's Master Plan. Issues will need to be resolved with regard to increased traffic.

Councilmember Almquist inquired what the overall density was.

Mr. Rosenberg stated the density is 3200 units on 730 acres. He advised roads will cross properties.

City Manager Gary Esplin commented he is concerned when projects are split up into phases. There has to be some assurance that the phases will be completed. In addition, as a homeowner in the area, he is concerned about traffic on Canyon View Drive.

City Attorney Shawn Guzman stated he sees a potential problem with the larger street that will go through private property.

DISCUSSION ON DEVELOPMENT AT 200 WEST TABERNACLE:

Wes Davis presented a power point presentation that covers the following topics: Wilkinson-Mixed Use Concept Proposal; The Site; Current Zoning; Views; Mixed Use; Corner; Zoning Adjacencies; process sketches; Corner Mixed Use; Building #2; Building #3; Building #4; Townhomes; Hardscape; Landscaping; Totals; Birds Eye; Studio; 2 Bedroom; 3 Bedroom; Interior Renderings -Conceptual; Townhomes; and Conceptual Perspective - Context; Conceptual Elevations - Context.

Bob Nicholson stated the City can leave the zoning C4 if the ground level were to have offices. The back portion would be PD Residential.

City Manager Gary Esplin advised there may be zoning issues as the City does not have anything like this, the best way may be to split the zones. He inquired what the phasing will be.

Mr. Davis stated phasing has not been discussed yet.

The consensus of the City Council was for the developer to move forward.

DISCUSSION ON PROPOSED SUNTRAN/IVINS CONNECTION:

Public Works Director Larry Bulloch introduced the new Suntran Manager Fred Davies.

Mr. Davies advised he recently spent ten hours traveling all of the bus routes.

Mr. Bulloch provided a handout on the proposed Ivins Commuter Route. The route will start at Sunset and Bluff, will travel down Snow Canyon Parkway into to Ivins and loop around back into St. George. He would like to offer full service, but that is not feasible. Having a commuter service will work better. Ivins has budgeted

\$122,000.00 to purchase a new bus, the balance will come from FTA grants. He read through the agreement.

Mr. Davis advised the recent customer satisfaction survey showed 76% of the customers use the system four or more times per week and do not have any other transportation options. He explained the para transit approval process.

ADJOURN TO CLOSED SESSION:

MOTION: A motion was made by Councilmember Almquist to adjourn to a closed session to discuss property sales.

SECOND: The motion was seconded by Councilmember Nickle.

VOTE: Mayor McArthur called for a roll call vote as follows:

Councilmember Bunker - aye
Councilmember Almquist - aye
Councilmember Nickle - aye
Councilmember Pike - aye

The vote was unanimous and the motion carried.

RECONVENE AND ADJOURN:

MOTION: A motion was made by Councilmember Bunker to reconvene and adjourn.

SECOND: The motion was seconded by Councilmember Nickle.

VOTE: Mayor McArthur called for a vote as follows:

Councilmember Bunker - aye
Councilmember Almquist - aye
Councilmember Nickle - aye
Councilmember Pike - aye

The vote was unanimous and the motion carried.

**PUBLIC TRANSIT SERVICE
INTERLOCAL COOPERATION AGREEMENT**

This Agreement is made and entered into effective on the _____ day of _____, 2013, by and between the City of St. George ("St. George") and Ivins City ("Ivins"), political subdivisions of the State of Utah and collectively referred to as the "parties".

RECITALS

WHEREAS, the parties are authorized to enter into an agreement for joint and cooperative action pursuant to the Interlocal Cooperation Act, Utah Code. Ann. §§ 11-13-101 *et seq.* (the "Act"); and

WHEREAS, St. George and Ivins are both authorized by state statute to provide public transit services in their communities and to extend those services into other entities pursuant to a joint agreement;

WHEREAS, St. George currently operates a public transit service; and

WHEREAS, Ivins has a need for public transit service that is connected to St. George's public transit service; and

WHEREAS, the parties have a mutual interest in expanding transit service in St. George and surrounding areas;

WHEREAS, the parties have determined that it will be mutually beneficial and in the best interests of their residents to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

SPECIFIC TERMS

1. Services to be Provided.

- a. One commuter bus route shall be provided between St. George and Ivins to be compatible with St. George public transit services as determined by St. George. It is understood and acknowledged that the use of a commuter route is subject to the requirements of the Federal Transit Administration (FTA). Initially such services shall be as follows:
 - 1) Service shall be Monday through Saturday with the exception of seven (7) major holidays.
 - 2) Frequency shall be five (5) times per day between the hours of 6:00 a.m. and 8:00 p.m.
 - 3) No paratransit service shall be provided.
 - 4) As otherwise mutually agreed upon by the parties in writing.

- b. The term "commuter bus route" means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.
 - c. The parties agree that the service may be upgraded to a fixed route service by renegotiating this contract to address all the conditions of a fixed route service such as additional equipment, costs, availability of funds and other factors. St. George will provide Ivins with available ridership data, when requested, for the purpose of assessing the need for service.
2. St. George Rights and Obligations.
- a. St. George shall:
 - 1) Exercise its sole discretion regarding management and operation of the commuter bus route provided herein. The terms of this Agreement shall in no way be construed to limit St. George's right to adjust services to fit the overall needs of its public transit services.
 - 2) Provide reliable service for the commuter bus route between St. George and Ivins. The quality of service shall be comparable to other areas within St. George's public transit service area and for the same fares as the St. George fixed route system.
 - 3) Provide the required fleet maintenance for buses and other vehicles providing said service.
3. Ivins Rights and Obligations.
- a. Ivins shall:
 - 1) Allow St. George to provide commuter bus route service in Ivins.
 - 2) Pay St. George the annual operations and maintenance costs and capital costs for the transit services provided to Ivins. Payment shall be made within thirty (30) days of invoice from St. George.
 - 3) Provide St. George with a bus route plan in Ivins that is acceptable to both parties.
 - 4) Provide the improvements and perpetual maintenance for all bus stops in Ivins at its cost. This shall include such things as benches, passenger shelters, signs, trash receptacles, roadway turnouts, etc. If St. George receives a request for any such improvement it shall forward such request to Ivins.

4. Determination of Costs.

- a. Annual Operation and Maintenance Costs. Ivins shall pay the costs as shown in Exhibit "A". This cost is based on the estimated increase in cost incurred by St. George to add a commuter bus route between St. George and Ivins. Any FTA grant funds that are eligible for said services and not used for St. George's costs shall be made available for Ivins costs. If any FTA grant funds are used for the Ivins route, Ivins shall pay all required matching funds for the grant. At the end of each year the cost will be re-evaluated. If the actual cost, as determined by St. George, is higher or lower than the estimate shown in Exhibit A by more than 20% an adjustment will be made in the annual payment to reflect the actual cost. The parties understand and agree that some costs are integral to the overall transit operations; thus the Ivins' share of such costs shall be proportioned out of the total cost. Ivins acknowledges that it has reviewed the cost estimate attached as Exhibit "A" and agrees that it is a fair estimate of the costs.
 - b. Capital Costs. Ivins shall pay all costs for the purchase of equipment and facilities needed to provide services to Ivins. Any FTA grant funds that are eligible for said services and not used for St. George's costs shall be made available for Ivins. At this time, the only required equipment is one 29-foot Gillig bus and one 24-foot bus as specified by St. George. Any FTA grant funds that are eligible for said services and not used for St. George's costs shall be used to purchase these buses, however, Ivins shall pay all matching costs and all costs associated with the purchase of these buses that are not covered by the FTA grant funds. St. George shall provide no funding for these purchases. These purchases will be required in the first year and at such time thereafter when each bus reaches its useful life. Replacement is required approximately every twelve (12) years or 500,000 miles for a 29-foot bus and every five (5) years or 150,000 miles for a 24-foot bus. St. George shall advise Ivins one year in advance of the need to order a replacement bus. The parties understand and agree that all facilities and equipment acquired by St. George using funds from Ivins shall become the property of St. George and will primarily be used to serve Ivins, however St. George reserves the right to use any of its fleet, facilities and equipment to provide the services under this Agreement.
5. Commencement of Services. The services under this Agreement shall commence within sixty (60) days of the occurrence of the following events:
- a. Delivery and final preparation of all required equipment.
 - b. Hiring and training of all required personnel.
 - c. Receipt of all required funds.
6. Fares, Fees and Other Additional Revenues. The Parties acknowledge that any fares, fees or other additional revenues derived as a result of transit services provided to Ivins are intermingled with other transit related revenues received by St. George. Such additional revenues shall be assumed to defray overhead costs that are attributable to services in Ivins, but

cannot be accounted for directly. Ivins shall not have claim to any portion of the fares, fees or other additional revenues received as a result of services provided to Ivins.

7. Audits. Upon request, Ivins shall be provided a copy of financial audits related to transit services that are performed for any year that they receive services under this agreement.
8. Term. The term of this Agreement shall be five (5) years with automatic renewal for an additional five (5) years unless notice is given by either party at least ninety (90) days prior to the expiration date.
 - a. Termination. The parties understand and agree that the services under this agreement are regulated by the federal government and are subject to the dynamics of public services. As a result there is potential that conditions may change. This Agreement may be terminated or renegotiated if any of the following conditions exist:
 - 1) There is a substantial change in the cost or the scope of services;
 - 2) Either party defaults in its obligations; or
 - 3) FTA adopts laws or regulations or changes funding that significantly affect the services or cost to either party.
 - b. Default. The occurrence of any of the following events shall constitute a default under this Agreement:
 - 1) Ivins fails to pay its portion of the costs within sixty (60) days of the due date
 - 2) St. George delivers the services under this Agreement to Ivins at a significantly lower quality than is provided elsewhere in its service area.
 - c. In the event that this Agreement is terminated due to default by St. George, Ivins shall be refunded on a prorated basis for the remaining portion of its annual operation and maintenance payment made for the fiscal year in which the termination occurs. Ivins shall also be refunded on a prorated useful life basis (either time or mileage, whichever is least) for capital facilities and equipment payments. Any refund shall be made in the earliest future fiscal year in which funds are available, but not longer than five (5) years.

GENERAL TERMS

1. Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.
2. Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.
3. Number and Gender. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the

parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

4. Authorization. Each individual executing this Agreement does represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.
5. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
6. Utah Law to Govern. This Agreement has been drawn and executed in the State of Utah. All questions concerning the meaning, intention and enforcement of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah. In any dispute jurisdiction and venue shall be in Utah.
7. Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty, or agreement other than those herein expressed.
8. Integration. All agreements heretofore made in the negotiation and preparation of this Agreement between the parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.
9. Time is of the Essence. Time is of the essence with regard to this Agreement as to each covenant, term, condition, representation, warranty and provision hereof.
10. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.
11. Partial validity. If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:
 - a. The remainder of this Agreement shall be considered valid and operative, and,
 - b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.
12. Ambiguities. This Agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that ambiguities shall be construed against the draftsman shall have no application to this Agreement.

13. **No Third Party Beneficiaries.** This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any party, and no such persons shall have any right of subrogation or cause of action against any party for any breach or default by any party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the parties' right to modify or renew this Agreement at any time or in any manner. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement.
14. **Laws and Regulations.** Any and all actions performed pursuant to this Agreement will comply fully with all applicable Federal and State laws and regulations.
15. **Equal Opportunity Clause.** The parties agree to abide by provisions of state and federal law, including executive orders, which prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, national origin, sex, age or disabilities.
16. **Binding on successors in interest.** This Agreement shall bind the parties hereto and their successors, heirs, assigns and representatives, and the obligations of the parties shall survive closing and shall not merge with any document of title.
17. **Assignment.** No rights or obligations of any party under this Agreement shall be assigned without the prior written consent of the parties. This Agreement is voidable and subject to immediate cancellation upon either party becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.
18. **Indemnity Clause.** Ivins shall defend, indemnify, save harmless and exempt St. George, its elected officials, officers, agents and employees from and against any and all loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, liability, and expenses whether accrued, absolute, contingent or otherwise, including, without limitation, attorney's fees and costs (whether or not suit is brought) and other liabilities of every kind, nature and description incident to, caused by, resulting from or arising out of the acts, errors, or omissions, or other liability imposed by law whether willful or negligent acts or omissions of Ivins, its officers, agents or employees and for all acts arising out of the services provided by this agreement that occur at bus stops in Ivins and other locations in Ivins but not on a St. George owned and operated bus. Ivins shall assume full responsibility for any transit related incidents that occur within its city limits unless such incident occurs on a St. George owned and operated bus.
19. **Notice.** Any notice to be given or payment to be made hereunder shall have been properly given or made when received by the respective party when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

As to: City of St. George
175 East 200 North
St. George, UT 84770
Attention:

As to: Ivins City
55 North Main
Ivins, UT 84738
Attention:

20. Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving party.
21. Attorney's fees. Should either party default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this Agreement or in pursuing any remedy provided under this Agreement or by applicable law, whether such remedy is pursued by filing suit or otherwise.
22. Rights and Remedies. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.
23. Amendments. This Agreement may not be amended except by approval by the governing body of each party and conformance with the requirements of the Act.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the date first above written.

SIGNATURES ON FOLLOWING PAGE

CITY OF ST. GEORGE

By:
Daniel D. McArthur, Mayor

ATTEST

By:
Christina Fernandez, City Recorder

APPROVED AS TO FORM

By:
Paula Houston, Deputy City Attorney

IVINS CITY

By:
Chris Hart, Mayor

ATTEST

By:
Kari Jimenez, City Recorder

APPROVED AS TO FORM

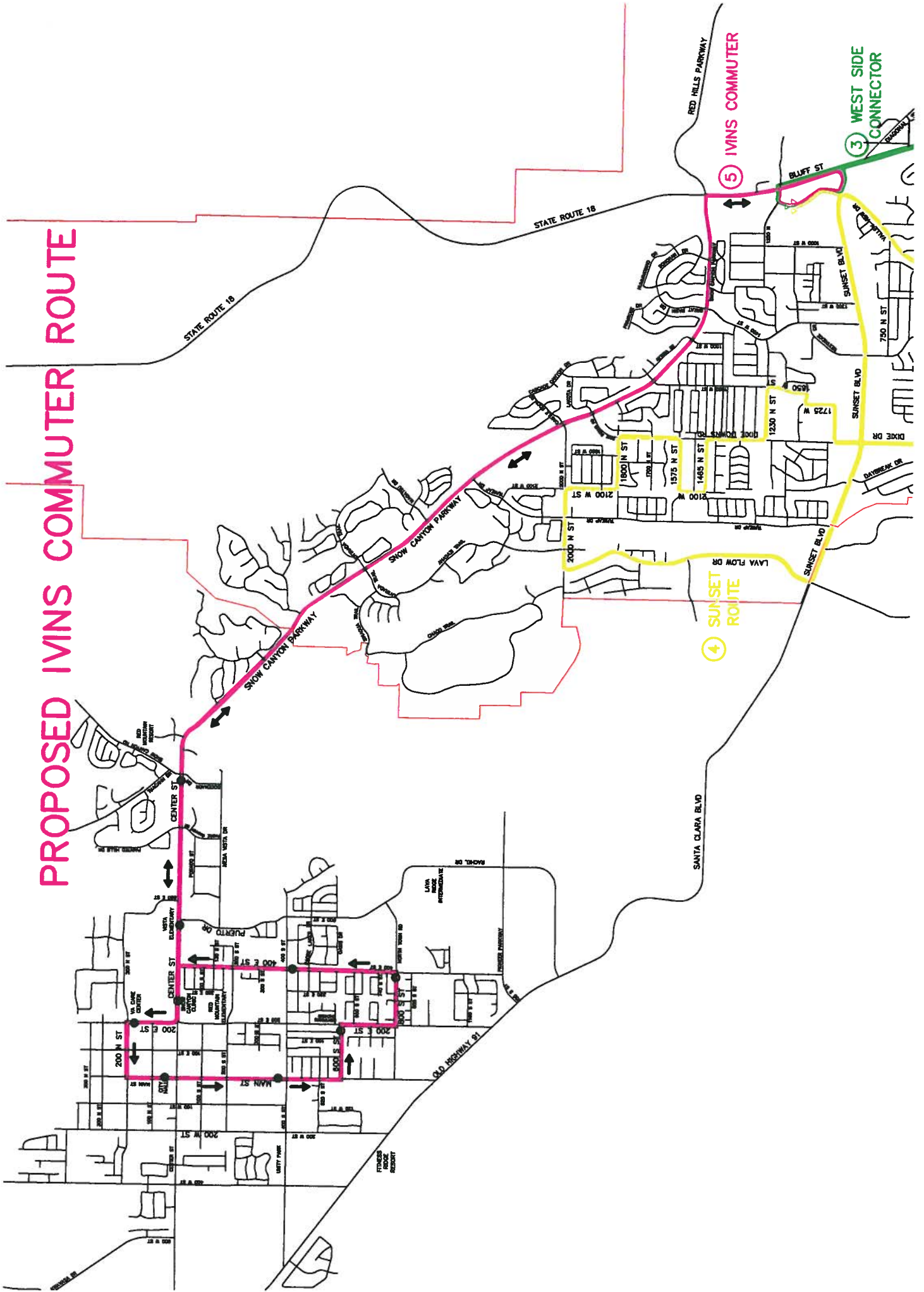
By:
Dale Coulan, City Attorney

EXHIBIT "A"

Estimated Annual Cost for Ivins Transit Service

	Total Cost	Local %	Ivins Portion
Bus	\$390,000*	20	\$78,000*
Backup Bus	85,000*	20	17,000*
Maintenance	20,000	20	4,000
Fuel	15,000	50	7,500
Personnel	30,000	50	15,000
Miscellaneous Operational	1,000	50	500
Total - 1st Year	541,000		\$122,000
Total - 2nd thru 5th Years (*not included)	66,000		\$27,000

PROPOSED IVINS COMMUTER ROUTE



COST OF SERVICE

YEAR	FIXED SERVICE		COMMUTER SERVICE	
	Total	Local	Total	Local
First	653,000	178,000	541,000	122,000
Thereafter	178,000	83,000	66,000	27,000

TERMS OF IVINS TRANSIT AGREEMENT

1. Commuter Bus Route (doors closed 5 miles)
2. No Paratransit Service
3. Five Times per Day; 6 Days per Week
4. Subject to St. George Operational Discretion
5. Same Level of Service and Fares as St. George
6. Ivins Pays Within 30 Days of Invoice
7. Ivins Improve and Maintain Bus Stops
8. Unused Grant Funds Available to Ivins
9. Ivins Pays Matching Costs
10. Ivins Cost Adjusted if Actual Varies 20%
11. All Facilities and Equipment are Owned by St. George
12. Value of Surplused Bus Credited to Ivins
13. Additional Revenues Credited to St. George
14. Five-Year Renewable Term
15. Termination Clause (substantial changes/default. Ivins may receive refund)
16. Ivins Indemnifies St. George for Incidents in Ivins (except on a bus)

SUNTRAN
CUSTOMER SATISFACTION SURVEY ANALYSIS
March - July 2012
(558 Respondents)

	Percentage	Description
1	76%	Use the bus 4 or more times per week.
2	87%	Are satisfied or extremely satisfied with SunTran Services.
3	81%	Thought 20 minute service frequency is important or extremely important.
4	90%	Thought expanding service to new areas is important or extremely important (most desired destination to Walmart).
5	42%	Have no vehicle.
6	76%	Do not have an option other than SunTran for travel.